रजिस्ट्री सं० डी० एल० (एन) 04/0007/2003—05

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किये आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 13 फरवरी, 2006

आ.अ. 32.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 1999 की निर्वाचन अर्जी संख्या 1, 4 और 5 में इलाहाबाद उच्च न्यायालय, लखनऊ बैंच, लखनऊ के तारीख 20 मई, 2000 के निर्णय को एतद्द्वारा प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[संख्या 82/उ.प्र.-लो. स./1, 4 और 5/99 (लख.)]

आदेश से,

ललित मोहन, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 13th February, 2006

O.N. 32.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 20th May, 2000 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Election Petition No. 1, 4 and 5 of 1999.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD (LUCKNOW BENCH) LUCKNOW
RESERVED
Election Petition No. 1 of 1999

Hari Shankar Jain .....Petitioner
Versus
Smt. Sonia Gandhi .....Respondent

CONNETED WITH
Election Petition No. 4 of 1999

Hari Krishna Lal .....Petitioner
Versus
Smt. Sonai Gandhi .....Respondent

AND
Election Petition No. 5 of 1999

Prem Lal Patel .....Petitioner
Versus
Smt. Sonai Gandhi .....Respondent

AND
Election Petition No. 5 of 1999

Prem Lal Patel ...Petitioner
Versus
Smt. Sonia Gandhi. ...Respondent

Hon'ble Bhanwar Singh, Ji :

All these election peititions have been filed under Section 81 read with Section 101 (a) of the Representation of People Act, 1951 (hereinafter referred to as the R.P. Act) calling in question the validity of the election of Smt. Sonia Gandhi, who was declared elected as Member of Lok Sabha from 25, Amethi Parliamentary Constitutency in the 1999 General Election held for constituting the 13th Lok Sabha.

Since the issues raised are common, all these petitions have been clubbed together for disposal and the parties agreed to the combined hearing.

The facts pleaded by the petitioners may, in brief, be narrated as below :

Sri Hari Shankar Jain, a practising lawyer of the Lucknow Bench of the Allahabad High Court filed Election Peititoner No. 1 of 1999. He was one of the contestants of the election held on 3-10-1999 in 25-Amethi Parliamentary constitutency. He contested the election as an independent candidate. The respondent Smt. Sonia Gandhi was declared elected defeating Sri jain and twenty five other contesting candidates. According to Sri Jain, the respondent was not qualified to contest the election, she being an Italian National. She was born in village Luciana situated in Italy and her name was Antonia Maino. Following her marriage with late Prime Minister Sri Rajeev Gandhi, she acquired India Citizenship under Section 5(1) (c) of the Citizenship Act, 1955 the effect from 30-4-1983. Since the provisions of Section 5 (1) (c) of the Citizenship Act were arbitrary and unreasonable, the acquisition of the Citizenship by Smt. Sonia Gandhi could not be termed to be legal. In this way, Sri Jain challenged the vires of the above referred provision of the Citizenship Act. He has even questioned I the authority of the Parliament while enacting the Citizenship Act and termed the said Act as unconstitutional. Apart that the provisions of the Citizenship Act were ambiguous as it did not lay down as to which marriage law or the mode thereof will be applicable under the Act. In view of the provisions of the said Act being *null* and *void*, the citizenship acquired by the respondent on the basis of her marriage under Section 5(1) (c) of the Citizenship Act too was void. As a matter of *facts,* she is not a Citizen of India and her name included in the Voters List was also in violation of Section 16 of the R.P. Act. In other words, she could not be a candidate in the election for Lok Sabha seat from 25, Amethi Parliamentary Constitutency and even the nomination papers submitted by her were illegally accepted by the returning officer. On the strength of these grounds, the petitioner has prayed for declaration to the effect that the election of the respondent from the said constitutency to the 13th Lok Sabha was void and further he prayed for setting aside the same.

Sri Hari Krishna Lal, the petitioner of Election Petition No. 4 of 2999 also pressed into service the same plea of declaration praying for setting aside the respondent's election after it being declared to be as void. He also contested the election from 25-Amethi Parliamentary Constitency and on being defeated filed this petition almost on the basis of same pleas as referred to above. However he mentioned a few different facts in his petition/According to him, the respondent had not acquired the requisite qualifications for obtaining Indian Citizenship and therefore, the decision of the Central Government regarding Indian Citizenship being conferred upon her was without any authority and jurisdication. The respondent had acknowledged of love, affection, adoration and adherence to her mother country Italy. She holds Italian passport and went in Italy in 1971 when Indian-Pakistan War broke in and even Sri Rajeev Gandhi went alongwith her and both of them came after cessation of War. When Smt. Indira Gandhi, the late Prime Minister was defeated in 1977 elections, the respondent went to live in Italian Embassy in New Delhi and stayed therefor sometime. After marriage, the respondent did not acquire Citizenship for many years. However, she sought for Indian Citizenship for the first time in 1983. The conferrment of Indian Citizenship on her was in flagrant disregard of the provisions of Citizenship Act, 1955 and as such it was without jurisdiction, illegal, void and ineffective. She still continues to be Italian Citizen and since dual Citizenship is not permissible in India, the certificate of Citizenship granted to the respondent under Section 6 for registration of her name as Indian Citizen under Section 5(1)(C) of the Act is without jurisdiction, illegal, void and inoperative. Although the respondent bears an excellent and good exemplary character and also she resembles an ideal Indian woman, yet since she does not possess adequate knowledge on any of the Indian Languages specified in VIII schedule, she could not be granted Indian Citizenship. Moreover, she was under acknowledgement of allegiance and adherence to her mother land namely, Italy and thus disqualified under Article 102 (I) (d) of the Constitution of India for being chosen as a Member of Prliament. The Returning Officer had improperly accepted her nomination papers.

The third petitioner Sri Prem Lal Patel filed Election Petition No. 5 of 1999 and it appears that he adopted inverbatim the pleadings of Sri Hari Shankar Jain's Election petition No. 1 of 1999. Sri Patel is an elector and that is the only difference of the two petitions. Sri Patel was a registered voter from 113-Salon Assembly Constitutency and his name was recorded in the voters List at Sl. No. 759 of the said Assembly segment. Accordig to him, the respondent Smt. Sonia Gandhi being not an Indian Citizen was disqualified from contesting the election from 25-Amethi parliamentary seat for Lok Sabha and the conferment of Indian Citizenship upon her by the Central Government in the year 1983 was illegal and contrary to the provisions of

the Constitution. The Returning Officer of the aforesaid Parliamentary election had illegally accepted the nomination papers of the respondent on these grounds, Sri Patel has sought a declaration for the respondent's election being declared as void.

The respondent filed an application in each petition under Order VI Rule 16 and Order 7 Rule 11 read with Section 151 C.P.C. By virtue of these applications, the respondent prayed for dismissal of all the three election petitions on the common pleadings that these petitions do not disclose any ground as specified in sub section (1) of Section 100 and Section 101 of the R.P. Act. In other works, these petitions do not disclose any cause of action or triable issues. Futher the pleadings are irrelevant vexatious and unnecessary. The petitioners have abused the process of law and court by filing these baseless petitions without disclosing any cause of action. The issue pertaining to the citizenship of the respondent cannot be agitated in the election petition. The challenge to the vires of the provisions of the Citizenship Act, 1955 through an election petition is misconceived and untenable. Even the voters list cannot be assailed in an election petition. Similarly the issue regarding acceptance of nomination papers of the respondent by the returning Officer cannot be raised in an election petition. However the nomination papers of the respondent being valid in all respect were rightly accepted. Even otherwise the petitioners have not alleged that the acceptance of nomination papers materially affected the election result. The respondent was elected by huge margin of over three lac votes and therefore, there cannot be any question of election result getting materially affected because of the alleged improper acceptance of nomination papers. Neither there is any illegality in the enrolment of the respondent in the electoral rolls nor in her having acquried the citizenship of India. It was pleaded further that the Hon'ble Supreme Court in the case of Bhagwati Prasad Dixit Ghorewala *Versus* Rajeev Gandhi, reported in AIR 1986 SC 1531 has inter alia held that if a question as to whether a person is qualified to be chosen as a member of Lok Sabha arises in an election Petition filed under the R.P. Act, the HighCourt cannot proceed to decide the question of loss of citizenship of the candidate concerned. In view of the law settled by the Hon'ble Supreme Court, this court has no jurisdiction to go into the issue of citizenship of the respondent in election petitions.

It was alleged further that even otherwise, the R.P.Act is a self contained code which prescribed inter alia the manner in which an election petition is to be presented procedure for trial and orders to be made by the High Court. The said Act does not permit raising of extraneous, irrelevant and unnecessary issues in an election petition. All these petitions are, therefore, wholly misconceived and do not give rise to any triable issue and cause of action. In view of all these facts and circumstances, the pleadings of all the three petitions are vague, unneccessary, irrelevant and abuse of the process of court and they are, therfore, liable to be struck off. The respondents has on the strength of all these pleadings prayed for dismissal of all the three election petitions.

I have heard the petitioners Sri Hari Shankar Jain and Sri Hari Krishna Lal in person, Sri Ravindra Kumar for Sri Prem lal Patel and Sri Milan Banerjee, learned Senior Advocate for the respondent.

Section 81 (1) of the R.P. Act under provisions of which all the three election peititons have been filed, postulates as follows :—

"81. Presentation of petitions. (1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty five days from but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

EXPLANATION : In this sub section, "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not",

The ground for which a candidate other than the returned candidate may be declared to have been elected as enunciated under Section 101 of the R.P. Act have not been preseed into service by any one of the three peititoners, Grounds mentioned in Section 100 of the R.P. Act are many in number, such as a returned candidates was not qualified or disqualified or he was guilty of corrupt practice precisely such grounds have been enumerated under the heading "Grounds for declaring election to be void. The said section provides: "

(1) Subject to thc provisions of sub-section (2) if the High Court is of opinion —

(a) that on the date of his election a returned candidate was not qualified or was disqualified to be chosen to fill the seat under the constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent, or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election in so far as it concerned a returned candidate has been materially affected —

(i) by the improper acceptance of any nomination or;

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,.

The High Court shall declare the election of the returned candidate to be void.

There were no allegations against the respondent under clauses (b) and (c) of sub section (i) of Section 100 of the Act and it was also fairly conceded by the petitioners that the election of respondent had not been materially affected by improper acceptance of respondent's nomination or by any corrupt practice committed in the interest of returned candidate by an agent or by the improper reception, refusal or rejection of any vote. Rather Sri Hari Krishana Lal in paras 28 of his petition has recited in clear terms that the respondent bears an excellent and good exemplary character, meaning thereby that nothing has been mentioned which could have any adverse bearing upon the respondent's election.

The only provisions which were taken recourse to were mentioned in clauses (a) of sub section (I) and Sub clause (iv) of Clause (d) and the only ground emphasised was that the respondent being not a citizen of India was disqualified to contest the election and her candidture being contrary to the provisions of Article 102 of the Constitution of India, materially affected the result of election in her favour and, therefore, the same deserves to be declared as void.

Shelter of sub-section (2) of Section 100 of the R.P. Act was not resorted to by the petitioners.

On the face of the above argument, it would be relevant to refer to Article 102 of the Constitution of India which reads as follows :

102 (1) A person shall be disqualified from being chosen as and forbeing a member of either House of Parliament—

(a) if he holds any office or profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder,

(b) if he is of unsound mind and stands so declared by a competent court :

(c) if he is an undischarged insolvent;

(d) if he is not citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Clause (a), (b), (c) and (e) have no relevant for our purpose. However, the petitioners contended that the respondent was disqualified form contesting election under clause (d) of the aforesaid provisions because of her being an Italian National. It is significant to not that the petitioners fairly admitted that Indian citizenship was conferred upon the respondent in the year 1983 although they challenged the conferment of citizenship on her it being against the provisions of the Citizenship Act.

In this background, it is thus clear that the scope of the petitioner's challenge is confined to the issue of respondent's citizenship. Besides the merits of the arguments on this point, it is also to be scrutinised as to whether the election petiitions are maintainable or not on the solitary cause of action namely, the citizenship issue.

As repeatedly recited in all the three petitions the respondent is admittedly an Indian citizen. she acquired the Indian citizenship under Section 5(1) (c) of the Citizenship Act on account of her marriage with late Prime Minister of India Sri Rajeev Gandhi. Whereas the Petitioner Sri Hari Shankar jain's contention is that the vires of the provisions of the Section 5(1) (c) of the Citizenship Act unconstitutional and as such the conferment of Indian citizenship upon the respondent is void, the argument of Sri Hari Krishna Lal is that Smt. Sonia Gandhi ceased to be Indian National on account of her acts of acknowledgement allegiance and adherence to a foreign State, namely, Italy. Supplementing his view point on the issue in question, Sri jain also pressed into service that the respondent's decision of carrying on with citizenship of Italy amounted to termination of Indian citizenship.

Mr. Milan Banerjee, learned Senior Advocate, appearing on behalf of the respondent while refuting all the contentions as laid above, contended that the matter pertaining to citizenship of the respondent on any ground whether it is conferment of citizenship or termination of citizenship or grant of citizenship on the basis of vires of

Section 5(1)(c) of the Citizenship Act, being unconstitutional as alleged does not fall within the competence of this court while dealing with an election petition under the R. P. Act as the Central Government and the Central Government alone is the competent authority to take a decision on the issue. In the case of the respondent, where it was the grant of citizenship under Section 5(1) (c) or now it is a question pertaining to termination of citizenship under Section 9 of the Citizenship Act, the decision of the Central Government would be final and the same cannot be questioned in an election petition. In support of this contention, learned counsel for the respondent cited the Hon'ble Supreme Court decision, "Bhagwati Prasad Dixit Ghorewala Vs. Rajeev Gandhi, AIR 1986 SC 1534 and Thampanoor Ravi Versus Charupara Ravi and Others", (1999) 8 SCC 74, whereas in the former case, the same questions regarding validity of Indian Citizenship was involved, it was a different matter of alleged disqualification of a candidate under Section 19(1)(c) of the Insolvency Act in the latter case. The case of Bhagwati Prasad is relevant to the point so far as the controversy involved in the case in hand is concerned. The case of Thampanoor Ravi also lends assurance to the respondent's Plea that in an election petition the issues which have to be adjudicated upon by the court or tribunal of exclusive jurisdiction, such a Insolvency Court, cannot be agitated and adjudicated upon by the high Court while dealing with an election petition. the appellant of that case, Sri Thampanoor Ravi contested an election for the Kerala Legislative Assembly and won it. However, his rivals-one a voter and another a contesting candidate challenged his election on the ground that he was an undischarged insolvent under the Insolvency Act and thus disqualified from contesting the election. The appellant owned some dues to the State Financial Corporation and since the firm of which he was a partner failed to discharge its debt he was liable to be declared as an undischarged insolvent. The Kerala High Court accepted the rivals plea and declared him as an undischarged insolvlent. The Hon'ble Supreme Court reversing the judment held that the High Court was not justified in holding that the expression "undischarged insolvent" should be understood dehors the Insolvency Act in a generals sense. Making a reference to the Provisions of Article 329 (b) of the Constitution the Hon'ble Supreme Court observed as follows :—

".....no election to a legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided by or made by the appropriate legislature, Under Section 80-A of the R.P. Act, the forum for adjudication of an election petition is the High Court. The scope of this provision is considered by this Court in Upadhaya Hargovind Devshanker Vs. Shidrendra Singh Vibhadrasinhji Solanki (AIR 1988 SC 915). In that decision, the question was whether an order made on an interlocutory application in an election petition could be the subject of a letters patent appeal. It was observed in that decision that conferment of power under the R.P. Act to try any election does not amount to enlargement of the existing jurisdiction of the High Court. The jurisdiction excisable under the R.P. Act is a special jurisdiction conferred on the High Court by virture of Article 329 (b) of the Constitution. Therefore, even though the High Court may otherwise exercise ordinary and extraordinary jurisdiction it would be difficult to envisage a situation that while trying an election petition in exercise of the jurisdiction conferred by the R.P. Act it can adjudicate upon the vires of the R.P. Act or any rule or order made thereunder and the election petition has to be tried in accordance with the provisions of the R.P. Act and thus the court cannot entertain and pronounce upon matters which do not fall within the ambit of Section 100 of the R.P. Act. Even an ordinary civil court will not have jurisdiction to decide questions arising under unsolvency enactments, much less a special authority like the High Court when it is not invested with such power under the Insolvency Act."

It is thus more than clear from the above quotation that the High Court while exercising powers under the R.P. Act cannot invoke jurisdiction of any other special enactment like the Insolvency Act. It can well be derived from the above observations that this court cannot either deal with the vires of any provisions of the Citizenship Act or a question relating to conferment or termination of citizenship of any person under the said Ac. In the case of Bhagwati Prasad (Supra) precisely the same issue was involved and it may be a coincidence that the question of citizenship raised in that case related to none else than the respondent is husband late Prime Minister Rajeev Gandhi who had contested incidentally from the same 25-Amethi Parliamentary which is in the picture at this juncture. It is also significant to note that the same marriage of the respondent with Rajeev Gandhi was the bone of contention in that case too. A perusal of the Hob'ble Supreme Court's decision reveals that the argument of the defeated candidates that Rajeev Gandhi lost his Indian Citizenship on account of his having married an Italian National, namely, Smt. Sonia Gandhi (respondent) and as such deserved to be declared disqualified from contesting the election was rejected by the Apex Court on the ground that the issue could not be adjudicated upon otherwise than on the basis of a declaration made by the Central Government. The Supreme Court ruled in clear terms that the High Court cannot proceed to decide a question of loss of citizenship of the candidate concerned. This principle of law laid down by the Hob'ble Supreme Court clinches the issue in the cases in hand and, therfore, it can be observed that the petitoners plea of Smt. Sonia Gandhi having lost her Indian Citizenship was not qualified to contest the election from 25-Amethi Parliamentary Constituency and as such her

election was void cannot be adjudicated upon by this court as such an adjudication would not be within its competence while dealing with an election petition. Whether it was a case of wrong conferment of citizenship on any ground whatsoever including the vires of Section 5 (1) (c) of the Citizenship Act being unconstitutional on the ground of there being no elaborate description as to which marriage law will be applicable in the case or it is the termination of citizenship on the strength of alleged acknowledgment of allegence or adherence to a foreign State the decision of the Central Government under Section 7 of the Citizenship Act shall be final and the High Court is debarred from taking a different view.

As regards the provisions of Section 9 of the Citizenship Act. the Hon'ble Supreme Court in the case of Bhagwati Prasad (Supra) clearly laid down that the said Section is a complete code as regards the termination of Indian Citizenship. The relevant part of the judgment may be quoted as below;

" In exercise of the powers conferred by Cl. (h) of Sub-Section (2) of S. 18 of the Citizenship Act, 1955 and Sub-Section (2) of S. 9 of that Act the Central Government has framed rules to decide the question of voluntary acquisition of citizenship of a foreign country and the consequent determination of the citizenship of India. By Rule-30 of the Citizenship Rules, 1956, the Central Government is appointed as the authority to decide such questions. Schedule III of the Citizenship Rules, 1956 contains the rules of evidence applicable to a case arising out under Section 9(2) of the Citizenship Act, 1955. No. other court or authority has the power to decide the question as to whether when or how an Indian Citizen has acquired the citizenship of another country. Even where the question whether a persons is qualified to be chosen as member of the Lok Sabha arises in an election petition filed under the representation of the People Act, 1951, the High Court cannot proceed to decide the question of loss of citizenship of the candidate concerned. It cannot be held that the citizenship Act, 1955 should yield in favour of the Representation of the People Act, 1951 only because the latter Act is enacted pursuant to article 327 of the Constitution. As mentioned earlier, the Citizenship Act, 1955 is also a law made by Parliament by virtue of art. 11 of the constitution read with entry 17 of the list of the seventh schedule to the constitution."

The Hon'ble Supreme Court also referred to a decision reported in AIR 1963 SC 645, State of Madhya Pradesh Versus Peer Mohammad, wherein it was held : "If a dispute arises as to wheather an Indian Citizen has acquired the citizenship of another country, it has to be determined by such authority and in such manner and having regard to such rules of evidence as may be prescribed in that behalf. That is the effect of Section 9(2), It may be added that the rules prescribed in that behalf have made the Central Government or its delegate the appropriate authority to deal with this question and that means the particular questions cannot be tried in courts.

From the above observations of the Hon'ble Supreme Court it is crystal clear that the issue of Citizenship cannot be adjudicated upon by the High Court in an election petition.

The Petitioner Sri Hari Shankar Jain also preferred to the case of Bhagwati Prasad (Supra) and argued with reference to the observation made in para 11 of the Judgment that the aforesaid view has been taken on the primacy of Section 9(2) of the Citizenship act but it does not apply to the other two types of disqualifications referred to in sub clause (d) of clause (i) of article 102 of the constitution. The Hon'ble Supreme Court.—Left those two issues, namenly, acknowledgement of allegiance or adherence to foreign State, without expressing any opinion but observed that harmonious way can resolve the vital issues pertaining to validity of an election and loss of Indian Citizenship on the acquisition of the Citizenship of a foreign country. In this context, it is significant to note that the petitioners have not given the instances of the respondent having acknowledged any allegiance or adherence to a foreign State. Mere swecping allegation that She visited Italy or the Italian embassy is nothing but a frivolous remark having no justification on merits.

The contention of Mr. Jain that there is a distinction between an Indian Citizen and 'Citizen of India' is fallacious as such an interpretation may amount to distortion of the provisions of the Constitution of India. All citizens are equal in the eyes of law and have equal rights under the Indian Constitution.

Mr. Jain also referred to citations "Gangadhar Yashwat Bhandare versus Erasmo Jesus De Sequeira, (1975) SCC 544 and Kedar Pandey Vs. Narain Bikram Shah, 1965 (3) SCR 793 and with reference to these decisions he argued that even in an election petition the issue relating to terrmination of Indian citizenship can be decided. In the former case, the respondent's election to Lok Sabha was assailed on the ground that he under a declaration acquired Portuguese citizenship and was thus not at all qualified to contest the election while in the other case, the election of the respondent was questioned on the ground of his being a Nepali citizen. in both the cases, the declarations of the Central Government were held to be final of the issue involved and no contrary view was taken, However, both these cases are distinguishable from the case of the respondent in hand as the plea taken in those cases was that the returned candidates were to Indian National at the relevant time of filling nomination and contesting election. In the case of present respondent Smt. Sonia Gandhi, the position is entirely different as the allegation of all the

three petitioners is that she no doubt above. What is significant to note is that in the latest case of Bhagwati Prasad (Supra) the Hon'ble Supreme Court has ruled that the decision of the Central Government on the issue of citizenship is final and the High Court in an election petition cannot deal with it further it is significant to note that in both the cases referred to by Mr. Jain as above, the High Court was not the original tribunal to deal with the election petitions. The election forums were different and the High Court was the appellate court exercising its appellate jurisdiction. In the case of Gangadhar Yashwant Bhandare the Goa, Daman and Diu (Citizenship) Order, 1962 had a vital role to play in determination of the question pertaining to the citizenship of respondent Erassmo Jesus De Sequiera. Certainly the provisions of the said order were different from the Citizenship Act, 1955. Further more, in both the cases the prime issue raised that the persons concerned were not Indian National and this was held to be within the jurisdiction of the special tribunal dealing with the election petition. For all three distinctive features neither of these two decisions is applicable to the case of the respondent in hand.

Mr. Jain referred to two more decisions of the Apex Court AIR 1961 SC 1467 The State of Andhra Pradesh Versus Abdul Khadar and AIR 1962 SC 70 Akbar Khan Alam Khan and another Versus Union of India and others and argued with reference to the principles of law laid down therein that the courts can decide the controversy pertaining to the citizenship. The argument of Mr. Jain is not acceptable as in both the cases also, the Hon'ble Supreme Court held that it was within the exclusive jurisdiction of the Central Government to take, a decision on the acquisition or termination of the Citizenship and the courts cannot decide these issues. However, in the case of 'However, in the case of 'The State Andhra Pradesh (Supra), the Hon'ble Supreme Court observed that the Magistrate in whose Court, the trial of the accused facing his prosecution under Section 14 of the Foreigners Act, 1946 was pending could have decided the limited point that the respondent had been a Pakistani National all along. From the evidence on record, the Hon'ble Supreme Court found that the accused was not a Pakistani National but left the question regarding his citizenship to be decided by the Central Government. In Para 8 of the judgment, the Hon'ble Supreme Court observed that if any question arises as to whether an Indian citizen has acquired the citizenship of another country, it shall be determined by such authority and in such manner as may be prescribed. It was mentioned further that under Rule 30 of the Rules framed under the Citizenship Act, the authority to decide that question is the Central Government, so the question whether the respondent, an Indian citizen, had acquired Pakistani Citizenship, cannot be decided by Courts.'

Similarly in the case of Akbar Khan Alam Khan (Supra), the same view was followed. The relevant part of the judgment may be quoted below :—

> "The courts below should have decided the question whether the appellants had never been Indian Citizens. If that question was answered in the affirmative, than no further question would arise and the suit would have to be dismissed. If it was found that the appellants had been on January 26, 1950, Indian Citizen only the question whether they had renounced that citizenship and acquired a foreign citizenship would arise. That question the courts cannot decide. The proper thing for the court would then have been to stay the suit till the Central Government decided the question whether the appellants had renounced their Indian citizenship and acquired a foreign citizenship and then dispose of the rest of the suit in such manner as the decision of the Central Government may justify."

It is relevant to note that the cases cited above did not involve an election dispute. In both the cases, pure and simple questions regarding citizenship were raised. In Akbar Khan Alman Khan's case, the petitioners sought declaration by way of filing a suit in civil court that they were citizens of India while in these case of 'The State of Andhra Pradesh,, the accused was being prosecuted for violation of section 14 of the Foreigners Act, 1946, neither of the two cases supports the petitioners case, rather they fortify the contention Mr. Milan Banerjee, learned counsel for the respondent that the citizenship issue cannot be determined by this court while dealing with an election petition.

The decision reported in 1960 (2) SCR 784 Jagan Nath Sathu versus Union of India "relied upon by Mr. Jain has no relevance as the said case had no involvement of an election issue. The petitioner of the said case was detained under the Preventive Detention Act on the ground of carrying on propaganda of hatred and contempt against the Government of India. It was a petition under Article 32 of the Constitution of India for enforcement of fundamental rights. According to Mr. Jain, the detenu's contention that Pakistan was not a foreign State it being a Commonwealth country was rejected and every independent country, whether a member of Commonwealth or not was considered to be a foreign State and, therefore, on the same analogy, a reference to the country of Italy may be made under Article 102(1) (d) of the Constitution. Mr. Jain's contention that

Italy is a foreign State is sustainable but as regards the question as to whether the respondent's citizenship which she acquired from Indian Government by virtue of which she was enrolled as citizen of India, stood terminated at some point of time and whether she had any acknowledgement of allegiance and adherence to Italy. Mr. Jain could not cite even a single instance in that context. Mere visit to Italy or Italian Embassy at Delhi as stated by Mr. Hari Krishna Lal in his petition could not be quoted as her allegiance of adherence to that State. Hundreds and thousands of Indians go to foreign countries in the World but their visits cannot be interpreted as their allegiance to the country they visit. Therefore, the contention of Mr. Jain and Mr. Hari Krishna Lal that the respondent should be treated to have allegiance and adherence to Italy, in view of the decisions referred to above is devoid of merit and deserves to be rejected.

In Izhar Ahmad Khan Vrs. Union of India, 1962 (3) SCR 235 also, the Hon'ble Supreme Court held that the question of citizenship has to be determined by the Central Government. It was also held that under Article 9 of the Constitution, the Claim of dual or plural citizenship is not sustainable. However, the plea that the respondent on account of carrying on dual citizenship was disqualified from contesting election is again not within the domain of this court to be adjudicated upon in an election petition. An emphasis can be laid at the cost of repetition that even this plea has to adjudicated upon by the Central Government and admittedly the respondent is an Indian Citizen for the last seventeen years. She has been residing in India for about twenty five years and admittedly her name appears in the electoral rolls. Mr. Jain's contention that she should have been in India for eighteen years before acquiring citizenship seems to be fallacious in view of all what has been discussed above.

The argument that her name wrongly figured in the voter list cannot be looked into by this court in view of the decision of the Apex Court in Dr. D. C. Saxena Versus Union of India and others AIR 1994 Delhi 145 Mr. Milan Banerjee, learned counsel for the respondent arguing on the point with reference to this decision, contended that such a question could be raised before the Election Commission and not before this Court in an election petition. The contention of Mr. Banerjee carries weight, The Hon'ble Court in para 9 of the said judgment has observed as follows:—

> ".....Preparation of electoral rolls has to be in consonance with the rules made in this regard, in a given case if the challenge is to registration of a name in non compliance with the Act or rules made thereunder in that behalf, then certainly this court can exercise its jurisdiction in Article 226 of the constitution in appropriate case. But then the election of a candidate once elected is not open to challenge on the ground of electoral roll being defective."

In the case in hand, the similar analogy will be applicable and the petitioners contention that the respondent's name wrongly figured in the electoral rolls in 1983 cannot be determined by this court, nor on the basis of the said ground, as can be observed, the respondents election has been adversely affected. Moreover, it is a question which the petitioners could have agitated before the prescribed authority well in time. The decision in Durga Shankar Mehta vesus Thakur Reghuraj Singh, 1955 (1) SCR 267 referred to by Mr. Jain is not applicable to the case of the respondent in hand. Mr. Jain argued that if the candidate contesting an election was under age, it amounted to constitutional disability under sub-section 2 (c) of Section 100 of the R.P. Act, therefore it can be looked into by the court. The Hon'ble Supreme Court held that such a question was not one of improper acceptance or rejection of the nomination by the Returning Officer but there was a fundamental disability in the candidate to stand for election at all. In this context, it is noteworthy that there is no prescribed forum or triubnal to adjudicate upon the age of a candidate contesting an election. The question of one's age is to be decided on the basis of proof and therefore, it can be determined by any court or tribunal but can be reiterated that the manner pertaining to citizenship has to be finally decided by the competitive authority namely, the Central Government and none else and, therefore, on the basis of this distinctive feature, it can be observed that the aforesaid citation is not applicable to the present case. For the same reasoning the decision in "Birad Mat Singhvi Versus Anand Purohit, (1988) Supp. SCC 604 is not attracted towards the case in hand as in that case also, primarily the issue pertaining to age was involved.

It is thus a well established principle that High Court while acting as election tribunal in exercise of jurisdiction conferred by the R. P. Act, can only adjudicate upon the matters relating to the R. P. Act, and cannot pronounce upon the matters which donot fall within the ambit of that law. It, therefore, follows that this court as an election tribunal cannot go into the issue of citizenship acquired by the returned candidate. Accordingly, the petitioner's contention on the issue is rejected..

Learned Counsel for the respondent reverting to the main objection that these petitions being not maintainable for lack of triable issues contended that the petitioners have not in compliance with the provisions of section 83 of the R.P. Act disclosed the material facts

and therefore, the averments made by them in their petitions being irrelevant and unnecessary are liable to be struck off. A perusal of Section 83 of the R.P. Act would reveal that an election petition shall contain a concise statement of material facts on which the petitioner relies. In most of the paragraphs in all the three petitions, the petitioners have raised issue relating to the provisions of the constitution and the Citizenship Act. As observed above, the issue of citizenship cannot be agitated in an election petition. An election tribunal having limitted powers cannot look into the vires of the provisions of section 5(1)(c) of the Citizenship Act, 1955, Rule 4 of the Citizenship rules, 1956 and Form-2 of Schedule 1 attached with the said Rules, in D. Ramchandran Vs. R. V. Jankiraman others (1999) 3 SCC 267, the Hon'ble Supreme Court held under Order VI rule 16 of the C.P. C. the court is enabled to strike out a pleading which may be unnecessary scandalous, frivolous or vexatious or which may tend to prejudic embarass or lay the fair trial of the suit or which is otherwise an abuse of the process of the court, Having recourse to the said decision, it can be observed that if the issue of citizenship is dropped, there remains nothing in all the three petitions to be adjudicated upon. In other words, the petitioners have not challenged the respondent's election on any ground as mentioned in Section 100 of the R. P. Act. In Dhartipakar Mandan Lal Agarwal versus Rajeev Gandhi, AIR, 1987 SC 1577, the Hon'ble Supreme Court held that paragraphs of the Petition not disclosing any cause of action can be struck off under order VI Rule 16 CPC and if the court finds that no triable issue remains to be considered, it has got power to reject the election petitioner under Order VII Rule 11 CPC. There are consistent desions of the Hon'ble Supreme Court on this point. In Azhar Hussain Versus Rajiv Gandhi, AIR 1986 SC 1253 also, the Hon'ble Supreme Court held that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Civil Procedure Core and it is settled law that the omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all. In Samar Singh Versus Kedar Nath AIR 1987 SC 1926 also the Hon'ble Supreme Court has held that in the event of Non-disclosure of cause of action, the court in exercise of powers under Order VII Rule 11 CPC can reject the election petition.

Supplementary his arguments on the points envisaged under order VI rule 16 CPC Mr. Milan Banerjee contended that it was scandalous to have alleged that the marriage of the respondent with late Prime Minister Rajeev Gandhi was void. It is an insult to the nation, as added further by the learned counsel. The submissions made by Mr. Banerjee are sustainable. To challenge a marriage more than 30 years after with out disclosing any ground whatsoever on the basis of which the allegation has been made is nothing but frivolous and scandalous. Accordingly, all such allegations deserved to be struck out under Order VI Rule 16 CPC.

The contention of Sri Hari Shanker Jain with reference to the citation D. Ramchandra Versus R.V. Jankiraman and others, (Supra) that an Election Petition should not be rejected in limine without trial is not acceptable as in that case, specific allegations of corrupt practice were made and, therefore, it was held by the Hon'ble Supreme Court that dismissal of the election petition in limine without trial was not justified.

The other citations "Mohan versus Bhairon Singh Shekhawat (1996) 7 SCC 679 and "Mohan Rawale Versus Damodar Tatyaba alias Dadasaheb and others (1994) 2 SCC 392 are also not applicalbe to this case as in those cases as well the allegations of corrupt practice were levelled and such allegations were held to be triable issues. In the case in hand no allegation of corrupt practice or any other ground enumerated under section 100 (1) and section 101 of the R. P. Act, has been pleaded.

As a matter of fact, the election law is a complete coce and section 81 of the R.P. Act, specifically provides that an election petition can be presented on one or more of the grounds specified in sub section (1) of Section 100 and Section 101 of the said Act. From the pleadings of the petitioners, none of the alleged grounds is made out and, therefore, all these peitions are liable to be dismissed.

Having regard to all what has been discussed above, I am inclined to hold that all the three petitions do not disclose any cause of action or triable issue and as such they are not maintainable under section 81 of the R.P Act. the crux is that the preliminary objections of the respondent are allowed and accordingly all these petitions are dismissed with costs.

May 20, 2000 Bhanwar Singh, Ji.

[No. 82/UP-HP/1, 4 &5/99(Luc.)]

By Order,

LALIT MOHAN, Secy.

446 GI/06-3

नई दिल्ली, 13 फरवरी, 2006

आ. अ. 33.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 116 ग की उप-धारा (2) के खण्ड (ख) के अनुसरण में भारत निर्वाचन आयोग 1999 की निर्वाचन अर्जी संख्या 1 और 4 में इलाहाबाद उच्च न्यायालय, लखनऊ बैंच लखनऊ की तारीख 20 मई, 2000 के निर्णय के विरूद्ध दाखिल की गई 2000 की सिविल अपील सं. 4400 और 4405 में तारीख 12 सितम्बर, 2001 को दिए गए भारत के उच्चतम न्यायालय के निर्णय को इसके द्वारा प्रकाशित करता है।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/उ.प्र.-लो.स./1, 4 और 5/99(लख.)]

आदेश से,

ललित मोहन, सचिव

New Delhi, the 13th February, 2006

O. N. 33.— In pursuance of clause (b) of sub-sections (2) of Section 116C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the judgement dated 12th September, 2001 of the Supreme Court of India in Civil Appeal No. 4400 and 4405 of 2000 arising from the judgement dated 20th May, 2000 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Election Petition No. 1 and 4 of 1999.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4400 OF 2000

Hari Shanker Jain ....Appellant

Versus

Sonia Gandhi ....Respondent
with C.A. No. 4405/2000

JUDGMENT

R.C. Lahoti, J.

General elections for constituting the 13th Lok Sabha took place in the months of September/October, 1999. In-25 Amethi Parliamentary Constituency there were 27 candidates in the fray out of whom Smt. Sonia Gandhi, the respondent was declared elected on 7-10-1999. The two appellants namely Hari Shanker Jain and Hari Krishna Lal had also contested the election but lost. Three election petitions were filed before the High Court of Allahabad laying challenge to the election of the respondent of which two were filed by the appellants before us. The two election petitions filed by Hari Shanker Jain and Hari Krishna Lal, the appellants before us, and a third election petition filed by an elector—Prem Lal Patel were respectively registered as Election Petition No. 1 of 1999, 4 of 1999 and 5 of 1999. In all the three election petitions the respondent, without filling written statement, moved applications under Order 6 Rule 16 read with Order 7 Rule and Section 151 of the CPC supported by affidavit submitting that the respective election petitions did not raise any triable issue before the High Court; that the pleadings were lacking in precision and were vague, unspecific, ambiguous and irrelevant, to some extent also scandalous, and hence amounted to abuse of the process of the court; and that the pleadings did not disclose any cause of action worth being tried by the High Court and therefore the pleadings were liable to be struck off and the election petition liable to be dismissed. The applications were opposed by the election petitioners filing replies thereto. The learned designated Election Judge heard the applications filed by the repondent and formed an opinion that none of the three petitions disclosed any cause of action or triable issue and as such none was maintainable under Section 86 of the Representation of the People Act, 1951. By a common order all the three petitions were directed to be dismissed with costs. prem Lal Patel, the petitioner in Election Petition No. 5 of 1999, has accepted the order of the High Court and given up pursuing the challenge to the election of the respondent. However, Hari Shanker Jain and Hari Krishna Lal have filed these appeals under Section 116-A of the Represenation of the People Act, 1951 (hereinafter, 'RPA, 1951', for short).

We will briefly set out the gist of the pleas raised by the two appellants in their respective election petitions to appreciate the nature of controversy arising for decision in these appeals. The details of the pleadings would be relevant but only a little later and at that stage we will revert back to the pleadings in such details as may be necessary. Suffice it to note for the moment that both the petitioners admit the respondent having acquired Indian citizenship by registration under section 5(1)(c) of the Indian Citizenship Act, 1955 on the ground of her having married Shri Rajiv Gandhi, a citizen of India (later Prime Minister of India). Both the election petitioners dispute the validity of the certificate of citizenship issued to the respondent and submit that she, being an Intalian citizen, did not satisfy the pre-requisites for entitlement to registration as a citizen of India and even otherwise, could not have become a citizen of India and is not a citizen of India. In addition, election petitioner Hari Shanker Jain has also laid challenge to the vires of Section 5(1)(c) of the Citizenship Act submitting that the provsion is *ultra vires* of the Constitution. We are not referring here to other parts of the pleadings and details thereof as we propose to set out the same in the laterpart of the judgement where it would be necessary and apposite.

The learned designated Election Judge held that the challenge to citizenship cannot be adjudicated upon by the High Court in an election petition. So also the plea that the respondent's name was wrongly entered in the voters list could be raised before the Election Commission and not before the High Court in an election petition. The respondent was holding a certificate of citizenship granted

under Section 5(1)(c) of the Citizenship Act which was final and binding and unless cancelled by the Central Government, the same could not be called in question in an election petition.The learned designated Election Judge also held that question of vires of any law could not be raised before nor could be gone into by him within the limited jurisdiction conferred on High Court hearing an election petition under RPA, 1951. In the opinion of learned designated Election Jugde the two election petitions did not raise any triable issue nor disclose any cause of action and hence were not maintainable under Section 86 of the RPA, 1951. The preliminary objections raised by the respondent were allowed and all the election petitions dismissed in limine.

At the hearing of these appeals, the two election petitioners, appellants in this court, appeared in-person and each of them addressed this court at length. Shri Milon Banerjee, the learned senior counsel ably assisted by Shri Gaurab Banerjee appearing for the respondent, supported the impugned order of the High Court assigning same additional reasons in support thereof. Following questions arise for decision in this appeal:

(1) Whether a designated Election Judge of High Court can entertain and decide a plea relating to validity of any law?

(2) Whether the plea that a returned candidate is not a citizen of India can be raised in an election petition before the High Court?

(3) Whether a plea questioning the citizenship of the returned candidate is entertainable by the High Court hearing an election petition in spite of the returned candidate holding a certificate of citizenship granted under Section 5(1)(C) of the Citizenship Act ?

(4) Whether on the pleadings of the two election petitioners, a cause of action and a triable issue was raised which should have been put to trial calling upon the respondent to file her written statement ?

We proceed to deal with these issues.

Question-1

Article 329 of the Constitution provides as under :—

> **"329. Bar to interference by courts in electoral matters.**—Notwithstanding anything in this Constitution
>
> (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court.
>
> (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under law made by the appropriate Legislature."

Under Section 80-A of the RPA, 1951, the court having jurisdiction to try an election petition shall be the High Court. Such jurisdiction shall be exercised ordinarily by a single judge of the High Court and the Chief Justice shall, from time to time, assign one or more Judges for that purpose. Grounds for declaring election to be void are enumerated in sub-section (1) of Section 100 of the Act, which reads as under :—

> **100. Grounds for declaring election to be void.**—(1) Subject to the provisions of sub-section (2) if the High Court is of opinion :—
>
> (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or
>
> (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
>
> (c) that any nomination has been improperity rejected; or
>
> (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
>
> (i) by the improper acceptance or any nomination, or
>
> (ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or
>
> (iii) by the improper reception, refusal of rejection of any vote or the reception of any vote which is void, or
>
> (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.
>
> the High Court shall declare the election of the returned candidate to be void.

Under Section 87, subject to the provisions of RPA, 1951 and of any Rules made thereunder, every election petition shall be tried by the High Court, as nearly as may

be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. The provisions of the Indian Evidence Act, 1872 are made applicable in all respects to the trial of an election petition unless otherwise provided by RPA, 1951. Who can be joined as parties to an election petition, is governed by Section 82 and contents of an election petition must satisfy the requirements of Section 83. What reliefs may be claimed by the petitioner are specified by Section. 84. A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. Under Section 98, the High Court is empowered, at the conclusion of the trial of an election petition, to dismiss the election petition or declare the election of all or any of the returned candidates to be void and may in addition declare the petitioner or any other candidate to have duly elected. Under Section 99, the High Court has been empowered to make certain other orders specially while deciding a case where any corrupt practice is alleged to have been committed and proved.

It is clear from a conspectus of the above said provisions that jurisdiction to try an election petition has been conferred on the high court. The grounds for declaring an election to be void must conform to the requirement of Section 100 and the operative part of the order of the High Court must conform to the requirement of Section 98 and 99 of RPA, 1951. The vires of any law may be put in issue by either party to an election petition before the High Court and the High Court can adjudicate upon such an issue if it becomes necessary to do so for the purpose of declaring an election to be void under Section 100 and for the purpose of making an order in conformity with Section 98 and 99 of RPA, 1951. The only restriction on the power of the High Court, as spelled out by clause (a) of Article 329 of the Constitution, is that the validity of any law relating to the delimitation of constituency or allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, cannot be called in question and hence cannot be so adjudged. A judge of the high Court can, therefore, while hearing an election petition, adjudicate upon the validity of any statutory provision subject to two limitations : (i) that it must be necessary to go into that question for the purpose of trying an election petition on any one or more of the grounds enumerated in Section 100 and for the purpose of granting anyone or more of the reliefs under Section 98 and 99 of the Act, and (ii) a specific case for going into the validity or vires of any law is made out on the pleadings raised in the election petition.

In Bhagwati Prasad Dixit 'Gohrewala' Vs. Rajeev Gandhi (1986) 4 SCC 78 this Court has observed that while trying an election petition under the RPA, 1951 the High Court does not stand derogated from its plenary powers. In T. Deen Dayal Vs. High Court of Andhra Pradesh -1997 (7) SCC 535 (to which one of us, Dr. A.S. Anand, J, as His Lordship then was is also a party) this Court has held that the High Court hearing an election petition is not an 'authority' and that it remains a High Court while trying an election petition under RPA 1951. The contention that the High Court while exercising its such power can pass orders as contemplated by Section 98 only and nothing more was rejected as being without substance. A full Bench of the Rajasthan High Court in Ramdhan Vs. Bhanwar Lal-1983 RLW 507 held that the conferral of jurisdiction on High Court to try an Election Petition is not by way of constituting a special jurisdiction and conferring it upon the High Court; it is an extension of the ordinary jurisdiction of the High Court to hear and decide election disputes. The designated Election Judge functions as a High Court and not as a Special Tribunal or as a Special Court or as *persona* designate. We find ourselves in agreement with the view so taken as it is consistent with the view taken by this Court In T. Deen Dayal's case. Incidentally, we may also refer to the case of National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. - (1953) SCR 1028 wherein this Court held that when power to hear a dispute under an Act is conferred on the High Court then the dispute has to be determined according to rules of practice and procedure of that Court and in accordance with the provisions of the Charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. We are, therefore, of the opinion that the designated Election Judge while hearing an election petition can exercise the jurisdiction vesting in the High Court, accepting such limits on its power as can be spelled out expressly or by necessary implication from the provisions of the RPA 1951 to examine the validity of any law or rule or order. There is nothing in RPA 1951 which may take away jurisdiction of the High Court to adjudicate upon the validity of any law which comes up for its consideration to decide the election petition. In Smt. Indira Nehru Gandhi Vs. Shri Raj Narain-1975 SCR (Sup.) 1 the Constitution Bench has adjudicated upon the validity of Constitution (39th Amendment) Act, 1975 though the question whether the High Court trying an election petition or the Supreme Court hearing an appeal under Section 116A or RPA 1951 can examine the vires of any legislation was neither raised nor decided.

The learned designated Election Judge was not, therefore, right in laying down as a wide and general proposition of law, that in an election petition question of validity of a statute cannot be gone into at all.

Questions -2 & 3

Can the validity of a certificate of citizenship issued under Section 5(1) (c) of Citizenship Act, 1955 at all be gone into during trial of an election petition? The learned designated Election Judge has taken the view that certificate of citizenship issued by the Central Government is valid

and binding and cannot be called in question before a court of law unless cancelled or annulled by the Central Government itself. A perusal of the relevant provisions and the scheme of the Citizenship Act would show that here again the High Court was not right in taking such a broad view which it has taken. Citizenship Act, 1955 is an Act to provide for the acquisition and determination of Indian citizenship. Acquisition of citizenship can be by birth (Section 3), by descent (Section 4), by registration (Section 5) and by naturalization (Section 6). Clause (c) of sub-section (1) of Section 5, as amended by Act No. 51 of 1986, provides that persons who are, or have been, married to citizens of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration, may, subject to satisfying other provisions including procedural ones, be registered as a citizen of India by the prescribed authority of the Central Government. Citizenship Act does not provide for cancellation of a certificate of registration issued under Section 5. Section 9 speaks of termination of citizenship upon acquisition of the citizenship of another country which event entalls cessation of citizenship of India. Sub-section (2) of Section 9 provides that if any question arises as to where, when and how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence as may be prescribed in this behalf. Section 13 is another provision, which provides for issuance of certificate of citizenship 'in case of doubt'. The Central Government has been empowered, in such cases as it thinks fit, to certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India. Such certificate is conclusive evidence except when it is proved that it was obtained by means of fraud, false representation or concealment of any material fact. Section 15 provides remedy of revision to a person aggrieved by an order made under the Act by the prescribed authority or any officer or an authority other than the Central Government. It is not the case of any of the election petitioners that the citizenship of India granted to the respondent was liable to be terminated on account of her having voluntarily acquired the citizenship of another country subsequent to her having acquired citizenship of India by registration, a question which, if raised, would have been within the exclusive jurisdiction of the Central Government to determine. The election petitioners are laying challenge to the correctness of the grant of citizenship to the respondent and her entitlement to be registered as a citizen of India under Section 5 (1) (c) of the Act. Such a question is not immune, by the scheme of the Citizenship Act, 1955, from being adjudicated upon by an appropriate forum other than Central Government. However, the case of the petitioners, as the pleadings will bear out, is that citizenship was granted to the respondent on 30th April, 1983. Thus the grant of citizenship of India to the respondent is admitted by both the petitioners-it is the correctness of that grant which is challenged. In Hari Shanker Jain's petition it is clearly stated that respondent "acquired India citizenship on 30-4-1983" and it is further averred that respondent "was granted Indian citizenship". The substance of the case is that it was wrongly granted for a variety of reasons. It is not the case of either of the petitioners that the certificate of citizenship granted to respondent has ever been cancelled or that her citizenship has been terminated.

It would be appropriate to have a brief survey of judicial opinion. In Bhagwati Prasad Dixit 'Ghorewala' Vs. Rajeev Gandhi, (1986) 4 SCC 78, the question raised in the election petition laying challenge to the election of the respondent was that in view of the respondent having married a foreign national, he had lost the citizenship and the respondent's citizenship, therefore, stood terminated under Section 9 of the Citizenship Act. This Court held that the question of citizenship could be gone into by the High court hearing an election petition and the High Court, trying an election petition, can declare an Indian citizen having become disqualified because of his having acquired the citizenship of a foreign State. But in view of the scheme of Section 9, which is a complete code as regards the termination of India citizenship on the acquisition of the citizenship of a foreign country, the High Court trying an election petition, could give such declaration only on the basis of a declaration made by the Central Government as to termination of citizenship being produced before a High Court, which shall have to be given effect to by the High Court. So long as such a declaration is not forthcoming, the High Court should proceed on the ground that the candidate concerned had not ceased to be an Indian Citizen. This is a harmonious way in which the two types of issues, namely, the issue relating to the validity of an election to either House of Parliament or of a State Legislature and the issue relating to loss of Indian citizenship on the acquisition of citizenship of a foreign country, which are both vital, can be resolved. The court drew a distinction between two situations: (i) a person may not be citizen of India because he has not acquired the citizenship of India at all, and (ii) a person may not be a citizen of India because having acquired citizenship, he may have lost it by voluntarily acquiring citizenship of another country as provided in Section 9(1) of the Citizenship Act.

In Akbar Khan Alam Khan & Anr. Vs. Union of India & Ors., (1962) 1 SCR 779, it was held by Constitution Bench that a question whether a person had never been an Indian citizen as distinguished from question of any person having acquired the citizenship of another country (and consequent thereupon his Indian Citizenship having been terminated) can be examined by a Civil Court. So is the view taken by another Constitution Bench in The State of Andhra Pradesh Vs. Abdul Khader, (1962) 1 SCR 737. In Sejal Vikrambhai Patel & etc. Vs. State of Gujarat & Ors. AIR 1993 Gujarat 150, a learned single Judge has held that

the question whether a person is or is not a citizen of India can be decided by a Court. So is the view taken by Calcutta High Court in Ali Ahmad Vs. Electroal Registration Officer and Ors., AIR 1965 Calcutta 1 and by the High Court of Andhra Pradesh in Mohammed Kamal Khan and Ors. Vs. The State of Adndhra Pradesh and Anr., AIR 1962 Andhra Pradesh 247. In Sultan Khan Vs. Sailesh Chandra Nundy, AIR 1963 Calcutta 527, a Division Bench of Calcutta High Court has held that in spite of the person's name having been included in roll of voters prepared under part III of the representation of the People Act, 1950. The Election Tribunal can enquire and decide whether the person had at all acquired citizenship of India. In Mangal Sain Vs. Shanno Devi, AIR 1959 Punjab 175, a Division Bench of Punjab High Court has held that where a person is not a citizen of India, the order of the Returning Officer accepting the nomination papers for election to a seat in the State Legislature is no bar to challenge his election by an election petition in spite of his being enrolled in the voters list. An appeal preferred against the decision of High Court was dismissed by this Court. [See Smt. Shanno Devi Vs. Mangal Sain, (1961) 1 SCR 576]

In Ghaurul Hasan and Ors. Vs. State of Rajasthan and Anr. (1962) 1 SCR 772, a certificate of registration of citizenship granted under Section 5 (1) (C) of the Citizenship Act was sought to be cancelled by the prescribed authority. A Constitution Bench of this Court held that the prescribed authority granting the registration could not cancel the same except under Section 10 of the Act and power to cancel the certificate issued under Section 5 of the Citizenship Act could not be derived from Section 21 of the General Clauses Act as the orders of the kind contemplated in Section 5 of the Citizenship Act do not fall within the scope of Section 21 of the General Clauses Act.

Article 84 of the Constitution provides inter alia that a person shall not be qualified to be chosen to fill a seat in Parliament unless he is a citizen of India. Article 102 of the Constitution provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament inter alia if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign State, or is under any aeknowledgment of allegiance or adherence to a foreign State. That a returned candidate was 'not qualified' or 'was disqualified' to be chosen on the date of his election, is specifically a ground for declaring his election void under clause (a) of sub-section (1) of Section 100 of RPA, 1951.

Preparation and revision of electoral rolls is governed by the Representation of the People Act. 1950 ('RPA, 1950', for short). Section 16 of RPA, 1950 provides, inter alia, a person shall be disqualified for registration in an electoral roll if he is not a citizen of India. In Shyamdeo Pd. Singh Vs. Nawai Kishore Yadav (2000) 8 SCC 46, a subtle distinction was drawn between " disqualification" for registration and "not being qualified" for enrolment in electoral roll and the consequences flowing from the two concepts while deciding the question of finality and conclusiveness attaching to the electoral roll. This Court held :—

> "The electoral roll is to be deemed final and conclusive as far as the fulfilment of qualification of a voter is coneerned but it is not to be deemed final and conclusive by the Election Tribunal so far as the disqualifications attaching to such persons are concerned. An entry in the electoral roll has to be taken to be conclusive proof of the fact that the person fulfils the requisite conditions as to age and residence in the constituency; finality has been given to the decision of the officer preparing the roll insofar as the fulfilment of conditions of registration is concerned but it has not been considered desirable to extend the same finality to the decision on the subject of disqualifieation as the latter is a more serious matter."

In Hari Prasad Mulshanker Trivedi Vs. V.B. Raju, (1974) 3 SCC 415, the election of the returned candidate was sought to be challenged on the ground that the names of the returned candidates were illegally entered in the electoral roll of the respective constituency though they were not ordinarily resident in the area covered by any Parliamentary constituency in the State of Gujarat. The returned candidates defended themselves, inter alia, by objecting to the jurisdiction of the High Court to decide whether the entries in the electoral roll were valid or not. The High Court held that it had jurisdiction to try the issue. This decision was challenged by filing an appeal before this Court. The Constitution Bench held that Article 326 of the Constitution expresses eligibility for registration as a voter in a positive way. Article 327 gives full power to Parliament subject to the provisions of the Constitution to make laws with respect to all matters relating to or in connection with elections including the preparation of electoral rolls. RPA, 1950, enacted in exercise of such power vesting in the Parliament, is a complete code so far as the preparation and maintenance of electoral rolls are concerned. By Section 30 of RPA, 1950, Jurisdiction of Civil Court to entertain or adjudicate upon any question as to entitlement to be registered in an electoral roll for a constituency has been taken away. By Implication, the jurisdiction of the Court trying an election petition to go into the question of eligibility of a voter enrolled in an electoral roll is also taken away. However, such issue is different from the question whether a candidate was not qualified or was disqualified to be chosen to fill the seat under the Constitution or the RPA, 1950 or the RPA, 1951. As there was no case of disqualification having been taken up in the election petition, the Constitution Bench set aside the decision of the High Court. Constitution' is in our opinion sufficiently wide to cover such cases where the question is not one of improper acceptance or rejection of the nomination by the Returning Officer, but there is a

fundamental disability in the candidate to stand for election at all."

Sub-section (7) of Section 36 of RPA, 1951 dealing with scrutiny of nomination paper by the Returning Officer itself provides that for the purpose of this section, a certified copy of an entry in the electoral roll shall be conclusive evidence of the person being an elector for that constituency "unless it is proved that he is subject to a disqualification mentioned in Section 16 of the Representation of the People Act, 1950". It is, therefore, clear that if a person is alleged to be not a citizen of India and, therefore, suffering from absence of qualification under Article 84 as also a positive disqualification under Article 102 of the Constitution, then the case is one which attracts applicability of Section 100 (1) (d) (iv) of RPA, 1951 and such an issue can be tried by the High Court in an election petition inspite of the returned candidate being enrolled in the voters list for it will be a case of alleged non-compliance with the provisions of Constitution.

Thus, looking at the scheme of the Citizenship Act, as also the judicial opinion which has prevailed ever since the enactment of Citizenship Act, 1955, we are unhesitatingly of the opinion that in spite of certificate of registration under section 5 (1) (c) of Citizenship Act, 1955 having been granted to a person and inspite of his having been enrolled in the voters list, the question whether he is a citizen of India and hence qualified for, or disqualified from, contesting an election can be raised before and tried by the High Court hearing an election petition, provided the challenge is based on factual matrix given in the petition and not merely bald or vague allegations.

A certificate of citizenship issued under Section 5 of the Act is a statutory certificate issued by a statutory authority. A presumption of validity and regularity attaches with such certificate. Under Section 114 illustration (e) of the Evidence Act, 1872 the Court may presume that official acts have been regularly performed. A presumption attaching with the certificate is available to be drawn to the effect that the prescribed authority issuing the certificate was competent to do so and that it had satisfied itself as to the existence of such facts as would entitle the applicant (that is, the respondent herein) to issuance of such certificate and that the application for the issuance of certificate filed by the applicant was in order. The presumption exists though it is rebuttable and not conclusive.

Question -4

We now proceed to examine whether the pleadings of any of the two election-petitioners disclose any cause of action and raise a triable issue which should have been put to trial.

Section 83 (1) (a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relles. By a series of decisions of this Court, it is well-settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression 'cause of action' has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balakarishna etc. Vs. Fernandez and Ors. etc. (1969) 3 SCR 603, Jitender Bahadur Singh Vs. Krishna Behari - (1969) 2 SCC 433. Merely quoting the words of the Section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan Vs. P.J. Francis and Anr. (1999) 3 SCC 737, this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "Material fact" is fatal to the elction petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

It is the duty of the Court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings.

There are two features common to both the election petitions. Firstly, both the petitions are verified as 'true to personal knowledge' of the two petitioners respectively which is apparently incorrect as the very tenor of pleadings discloses that any of the petitioners could not have had personal knowledge of various facts relating to the respondent personally and during the course of hearing we had put this across to the two petitioners and they responded by submitting only this much that the verification if incorrect was capable of being cured. The second common feature in the two petitions is that there are bald assertions made about the Italian law without stating what is the source of such law as has been pleaded by the election-petitioners or what is the basis for raising such pleadings. These averments also have been verified

as 'true to my knowledge' of each of the election-petitioners a position, wholly unacceptable.

The two election petitioners/Appellants have at several places in their election petitions made certain averments relating to Italian law based where on they have tried to build a case that the respondent could not have renounced the Italian citizenship and become a citizen of India when she applied for and was issued a certificate of citizenship under section 5(1) (c) of Citizenship Act. We have carefully perused the averments made in the two election petitions in this regard and we are definitely of the opinion that the averments are bald allegations without any basis thereof and do not amount to pleading material facts which may warrant any enquiry into those allegations.

Italian law is a foreign law so far as the courts in India are concerned. Under Section 57(1) of Indian Evidence Act, 1872, the Court shall take judicial notice of, *inter alia*, all laws in force in the territory of India. Foreign laws are not included therein. Sections 45 and 84 of Evidence Act permit proof being tendered and opinion of experts being adduced in evidence in proof of a point of foreign law. Under Order VI Rule 2 of the Code of Civil Procedure, 1908, every pleading shall contain a statement in concise form of the material facts relied on by a party but not the evidence nor the law of which a Court may take judicial notice. But the rule against pleadings law is restricted to that law only of which a Court is bound to take judicial notice. As the Court does not take judicial notice of foreign law, it should be pleaded like any other fact, if a party wants to rely on the same (see Mogha's Law of Pleadings, 13th Edition, Page 22). In Guaranty Trust Company of New York Vs. Hannay & Co. ,1918 (2) KB 623, it was held that ,"Foreign law is a question of fact to an English Court ..... the opinion of an expert on the fact, to be treated with respect, but not necessarily conclusive". In Beatty Vs. Beatty, 1924 (1) KB 807, it was held that the American Law in English Courts must be proved by the evidence of experts in that law. In Lazard Brothers and Company Vs. Midland Bank, Limited, 1933 AC 289, their Lordships of Privy Council observed that what the Russian Soviet law is, is a question of fact, of which the English Court cannot take judicial cognizance, even though the foreign law has already been proved before it in another case. The court must act upon the evidence before it in that actual case. The statement of law by Halsbury in Laws of England (Third Edition, Vol. 15, Para 610 , at page 335) is that the English Courts cannot take judicial notice of foreign law and foreign laws are usually matters of evidence requiring proof as questions of fact.

There is, thus, no manner of doubt that in the courts in India, a point of foreign law is a matter of fact and, therefore, a plea based on a point of foreign law must satisfy the requirement of pleading a material fact in an election petition filed before the High Court. The two election petitions do not satisfy this requirement. The averments made in the two election petitions do not go beyond making bald assertions. The pleadings do not give any indication of such Italian law on which are based the averments made in the election petitions whether it is any statutory enactment or any other provision or principle having the force of law in Italy. During the course of hearing we asked the two appellants if they could show us any book, authority or publication based where on we could form an opinion, even *prima facie*, in support of the averments relating to Italian law made in the election petitions. The two appellants regretted there inability to show us anything.

In Election Petition No. 1 of 1999 filed by Hari Shanker Jain the respondent is alleged to be an Italian national and a citizen of Italy without stating on what facts and other acceptable material the petitioner is drawing such inference as to foreign citizenship of the respondent. It is alleged that the respondent was born on 9-12-1946 in village Luciana in Italy. Her name was Ms. Antonia Maino. The petition states that she was allegedly married to Shri Rajiv Gandhi, an Indian citizen on 25-2-1968 but the marriage was null and void. The respondent acquired Indian Citizenship on 30-4-1983 under Section 5(1)(c) of the Indian Citizenship Act, 1955 on the ground of her having married a citizen of India. As her marriage itself was null and void the respondent could not have been registered as a citizen under Section 5(1)(c) of Citizenship Act. She should have renounced her citizenship of Italy which she did not. No basis or source of knowledge of all such averments is stated. A major part of the election petition sets out a plea raising a contention that in the constitutional scheme of citizenship a distinction has been drawn between citizen of India and being an Indian citizen. Developing the plea Hari Shanker Jain submitted at the hearing that in Part II of Constitution, while dealing with Citizenship, Articles 5 to 10 use the expression Citizen of India. Article 11 which empowers Parliament to make law with respect to the acquisition and termination of citizenship and all other matters relating to citizenship speaks of Citizenship only and not of Citizenship of India. Parliament cannot, therefore, make any law conferring status of Citizen of India on anyone and if it does so the parliamentary enactment shall be *ultra virus* the Constitution, submitted Hari Shanker Jain at the hearing. He went on to enlarge his plea by submitting that under the Constitution of India human beings have been dealt with and categorised into three classes; (i) persons, (ii) citizens, and (iii) Citizens of India. He urged that the rights and privileges conferred on Citizen of India are not available to Indian Citizens and persons and asserted that the provisions of Citizenship Act which confer the status of Citizen of India, as distinguished from Indian Citizen on a person other than one in whom the citizenship vests by right i.e. by birth or by descent are *ultra vires* the Constitution. According to the petitioner Articles 84 and 102 of Constitution use the expression 'Citizen of India' and not just an Indian Citizen. Right to contest an election is conferred only on a 'Citizen

of India' as defined in Part II of Constitution. The respondent could not have been and is not a Citizen of India—in the sense of the expression sought to be assigned by the petitioner, and she could not have acquired the status and quality of 'citizen of India' solely by virtue of registration under Section 5 of the Citizenship Act. She could neither have been enrolled as a voter nor could have been a candidate for membership of Parliament.

While we appreciate the forensic ability of the learned petitioner in person, but regret we must, in view of settled law, that the plea so raised can neither be entertained nor adjudicated upon. There are two hurdles starting at the petitioner. Firstly, the manner and the enlarged dimension in which the plea has been projected before this Court does not find reflected in the election petition. No foundation has been laid in the pleadings by stating all relevant material facts enabling the Court to enter into examining such a plea of far reaching consequences and implications. Secondly, the challenge so sought to be laid to the constitutional validity of the provisions of the Citizenship Act is very wide and cannot be adjudicated upon without impleading the Central Government as party to the proceedings and affording an opportunity of joining the pleadings and adducing evidence. In our opinion the issue raised by the petitioner, insofar as vires of the Act is concerned, cannot conveniently be tried in an election petition on the basis of vague and indefinite pleas raised in the election petition. We find force in the submission of Mr. Milon Banerjee that since the petitioner himself has admitted that respondent was "granted Indian citizenship" on 30th April, 1983, and the respondent has in her affidavit filed in the High Court in support of her application under Order VI Rule 16 and Order VII Rule 11 read with Section 151 CPC submitted that **she is a citizen of India** and there was no illegality in her enrolment in the electoral rolls and acquiring citizenship of India and that the challenge to her citizenship of India was misconceived. Yet the petitioners in their reply did not improve upon their pleas and rest contended by re-asserting that there was no legal impediment in filling the election petition and "the facts and pleas are reiterated." It must be held that respondent by virtue of the certificate granted to her under Section 5(1)(c) of the Citizenship Act, which certificate has not been cancelled, withdrawn or annulled till date, is a Citizen of India." The petitions are filed nearly two decades after the grant of citizenship to the respondent. At no point of time did the petitioners even challenge the inclusion of her name in the electoral roll. Making vague and bald allegations, without giving any material facts, after losing the elections go to show that proper care even was not taken before filing the petitions by gathering and stating all material facts. So far as the pleadings as to Italian law are concerned, we have already expressed our opinion that the pleadings are infirm and deficient. The challenge laid to the validity of respondents marriage with Shri Rajiv Gandhi not only suffers from deficiency inpleadings but is also scandalous. It is interesting to note that while Hari Shankar Jain disputes the validity of marriage of respondent with Rajiv Gandhi, Hari Krishna Lal, the petitioner in Election Petition No. 4 of 1999, admits, in the pleading itself, the respondent to be wife of Shri Rajiv Gandhi and states her as resembling an "ideal Indian women" bearing "an excellent and good exemplary character". Hari Shanker Jain, in fairness to petitioner we must say, did not press and pursue this "allegations" at the hearing before us.

In Election Petition no. 4 of 1999 filed by Hari Krishna Lal it is alleged that the respondent is a citizen of Italy and has not renounced the same without stating on what facts or material the petitioner has drawn that inference. It is alleged that the respondent was at the material time 'under acknowledgment of allegiance and adherence' to Italy, a Foreign State, which is a disqualification within the meaning of Article 102 of the Constitution. The material part of the averment is an expression picked up and reproduced as a mutual from Article 102 of the Constitution but the material facts where from such inference may follow have not been stated. The petition then alleges that the respondent did not reside in India for a period of 12 months immediately before her having applied for citizenship by registration on 7th April, 1983 which was granted to her on 30th April, 1983. However, the petition itself alleges that the respondent came to India from Italy some time after the year 1971 and was in India in the year 1977, 1980 and 1983. When did the respondent then go away from India and the exact period of time when the respondent was or must have been away from India so as to infer her having not resided in India for the requisite period of 12 months before 30th April, 1983, as averred are not stated. Factual matrix for the bald assertion is completely missing from the election petition. There is no overt act relating to adherence and allegiance after the grant of citizenship to the respondent, even alleged let alone supported by through any material facts.

In both the election petitions there are averments made touching the contents of respondents application filed for grant of certificate of citizenship so as to point out alleged infirmities in the application and the proceedings taken thereon but without disclosing any basis for making such averments. None of the petitioners states to have inspected or seen the file nor discloses the source of knowledge for making such averments. Clearly such allegations are bald, vague and baseless and cannot be put to trial.

Without further burdening this judgment by dealing with each and every other averment made in the two election petitions, it would suffice to say that we have carefully read each of the two election petitions and heard each of

the two election petitioners (appellants) in very many details specially on the aspect of the election petitions suffering from the vice of not satisfying the mandatory requirement of pleading material facts as required by Section 82(1)(a) of RPA 1951 and we are satisfied that the two election petitions do not satisfy the requirement statutory enacted and judicially explained in umpteen number of decisions. The petitions are hopelessly vague and completely bald in the allegations made, most of which could not possibly be within the personal knowledge of the petitioners but still verified as "true" to their knowledge, without indicating the source. Such pleadings cannot amount to disclosing any cause of action and are required to be rejected/dismissed under Order VII Rule 11 IPC.

To sum up, we are of the opinion that a plea that a returned candidate is not a citizen of India and hence not qualified, or is disqualified for being a candidate in the election can be raised in an election petition before the High Court in spite of the returned candidate holding a certificate of citizenship by registration under Section 5(1)(C) of the Citizenship Act. A plea as to constitutional validity of any law can, in appropriate cases, as dealt with hereinabove, also be raised and heard in an election petition where it is necessary to decide the election dispute. The view of the law, stated by the learned designated Election Judge of the High Court of Allahabad cannot be sustained. To say the least, the proposition has been very widely stated in the impugned order of High Court. However, in spite of answering these questions in favour of the appellants yet the election petitions filed by them cannot be directed to be heard and tried on merits as the bald and vague averments made in the election petitions do not satisfy the requirement of pleading material facts within the meaning of Section 82(1)(a) of RPA 1951 read with the requirements of Order VII Rule 11 CPC. The decision of the High Court dismissing the two election petitions at the preliminary stage, is sustained though for reasons somewhat different from those assigned by the High Court. The appeals are dismissed but without any order as to the costs.

.....CJI

.....J

(R. C. Lahoti)

.....J

(Doraiswami Raju)

New Delhi :

September 12, 2001.

[No. 82/UP-HP/1, 4 & 5/99(Luc)]

By Order,

LALIT MOHAN, Secy.

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